

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ENTERED

DEC 18 2002

TAWANA C. MARSHALL, CLERK

IN RE: §
§
JAMES LLOYD BLYTHE, SR., §
Debtor. § CASE NO 02-40898-DML-7
§

ALYSSA WRIGHT, §
Plaintiff, §
§
vs. § ADV. NO. 02-4141
§
JAMES LLOYD BLYTHE, SR., §
Defendant §
§

CHRISTINA RAMSEY FITTS, §
Plaintiff, §
§
vs. § ADV. NO. 02-4142
§
JAMES LLOYD BLYTHE, SR., §
Defendant §
§

MEMORANDUM OPINION AND ORDER

Before the court are the motions for relief from the automatic stay filed by Alyssa Wright ("Wright") and Christina Ramsey Fitts ("Fitts", and, together with Wright, the "Plaintiffs"). In the motion filed by Wright (the "Wright Motion") and the motion filed by Fitts (the "Fitts Motion", and, together with the Wright Motion, the "Motions"), the Plaintiffs, respectively, have asked the court to modify the automatic stay in Debtor's chapter 7 case to allow liquidation in other courts of certain claims. The matters presented by the Motions are core proceedings pursuant to 28 U.S.C. § 157(b)(2)(A) and (I). The following constitutes the court's findings of fact and conclusions of law pursuant to FED R. BANKR. P. 7052 and 9014.

I. General Background

On February 4, 2002 (the “Petition Date”), Debtor filed his voluntary petition for relief under chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”). Debtor was a shareholder in Blythe-Nelson, Inc. (“BNI”), Blythe-Nelson Management Services, Inc. (“BNMS”), Installation Technologies Corporation (“ITC”), and the managing general partner of Blythe-Nelson (“BNGP”, and together with BNI, BNMS and ITC, the “Blythe-Nelson Entities”). In April 1994, Wright was hired to work in the marketing department of BNGP. In October 1997, Fitts was hired as the human resources director of BNI.

Plaintiffs have alleged that Debtor committed multiple acts of sexual harassment against them during the course of their employment with the Blythe-Nelson Entities. On February 2, 2001, Wright filed suit (the “Wright Suit”) against Debtor in the United States District Court for the Northern District of Texas, seeking recovery for intentional infliction of emotional distress, violations of Title VII of the Civil Rights Act of 1964 (“Title VII”), assault and battery, and civil conspiracy. On February 21, 2001, Fitts filed suit (the “Fitts Suit”, and, together with the Wright Suit, the “Suits”) against Debtor in the 44th Judicial District Court in Dallas County Texas, seeking recovery for intentional infliction of emotional distress, negligence and gross negligence, and assault and battery. On September 16, 2002, the Equal Employment Opportunity Commission issued a letter of determination to Fitts finding reasonable cause to believe a violation of Title VII had occurred. On the Petition Date, the Suits were automatically stayed by section 362(a)(1) of the Bankruptcy Code.¹

In addition to the Motions, Plaintiffs have also filed adversary proceedings (the “Adversary Proceedings”) asking this court to determine whether the judgments (if any) resulting

¹ Hereinafter, all references to “section” shall refer to the applicable section of the United States Bankruptcy Code, 11 U.S.C. §101 et seq.

from the Suits will constitute nondischargeable obligations of the Debtor pursuant to section 523(a)(6).² The concurrent pendency of the Suits and the Adversary Proceedings presents the court with something of a dilemma. On the one hand, if the court were to hear the Adversary Proceedings before the Suits were prosecuted to judgment, it would be determining the dischargeability of debts that have not yet been definitively established. On the other hand, if the court modifies the automatic stay to allow the Suits to proceed to judgment, it may, in effect, be abdicating its authority, in that certain findings in the Suits may be dispositive on the issue of dischargeability in the Adversary Proceedings.

Notwithstanding these concerns, the court must focus on the narrow issues presented in the Motions. In the court's view, the issues before it today are: (1) whether cause exists to modify the automatic stay to allow Wright to prosecute the Wright Suit in order to liquidate the claims asserted therein; and (2) whether cause exists to modify the automatic stay to allow Fitts to prosecute the Fitts Suit in order to liquidate the claims asserted therein.

² Both Wright and Fitts also brought adversary proceedings against Mart D. Nelson ("Nelson"), a business associate of Debtor and a debtor in his own case currently pending before the Honorable Barbara J. Houser, in connection with Nelson's actions with respect to Debtor's alleged misconduct (the "Nelson Adversary Proceedings"). Because of the similarity of facts and parties in the Adversary Proceedings and the Nelson Adversary Proceedings, the actions were consolidated for purposes of trial before Judge Houser on the condition that the Adversary Proceedings would be severed and transferred back to this court if the Nelson Adversary Proceedings were disposed of summarily before trial. On November 22, 2002, Judge Houser entered judgments in favor of Nelson in the Nelson Adversary Proceedings. On or about December 10, 2002, the Adversary Proceedings were severed from the Nelson Adversary Proceedings and returned to this court.

II. Discussion

Upon the commencement of a case under the Bankruptcy Code, section 362 springs into effect to provide a broad stay of litigation, lien perfection and other actions, judicial or otherwise.³ In particular, section 362(a)(1) serves to stay litigation against the debtor that was or could have been commenced prior to the commencement of the case or that is aimed at recovering a prepetition claim against the debtor.⁴ One of the principal purposes of the stay is to protect competing creditors from unequal treatment and provide the debtor with a “breathing spell” from collection efforts.⁵ Further, it prevents a “chaotic and uncontrolled scramble for the debtor’s assets in a variety of uncoordinated proceedings” by insuring the resolution of the debtor’s affairs will be centralized (at least initially) in a single forum in order to prevent conflicting judgments from different courts and in order to harmonize all creditors’ interests with one another.⁶

Section 362(d), however, provides a means by which a creditor may obtain relief from the automatic stay in certain circumstances. It states, in relevant part:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the [automatic stay], such as by terminating, annulling, modifying, or conditioning such stay –

³ See generally 3 COLLIER ON BANKRUPTCY ¶ 362.01, et seq. (15th ed. rev. 2002). See also *In re Freemyer Indus Pressure, Inc.*, 281 B.R. 262, 266 (Bankr. N.D. Tex. 2002).

⁴ See 11 U.S.C. 362(a)(1). See also *In re Benson*, 262 B.R. 371, 377 (Bankr. N.D. Tex. 2001).

⁵ See *In re Pointer*, 952 F.2d 82, 86 (5th Cir. 1992) (“[o]ne of the principal purposes behind the automatic stay is to protect creditors from unequal treatment.”), *In re Cajun Electric Power Cooperative, Inc.*, 185 F.3d 446, 459 (5th Cir. 1999) (citing *In re Commonwealth Oil Ref. Co.*, 805 F.2d 1175, 1182 (5th Cir. 1986)) (recognizing that the automatic stay is designed to give debtors a breathing spell from collectors); *Reliant Energy Servs. v. Enron Can. Corp.*, 2002 Lexis Dist. 23263, *8 (S.D. Tex. 2002).

⁶ See *In re Fowler*, 259 B.R. 856, 858 (Bankr. E.D. Tex. 2001) (citing *Fidelity Mortgage Investors v. Camelia Builders, Inc.*, 550 F.2d 47 (2d Cir. 1976), *cert. denied*, 429 U.S. 1093, 97 S.Ct. 1107, *reh’g denied*, 430 U.S. 976, 97 S.Ct. 1670 (1977)).

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest....

While the “cause” referred to in section 362(d)(1) is not defined in the Bankruptcy Code, the legislative history provides that a need for litigation to proceed in another tribunal may provide cause for relief from the automatic stay.⁷ The court must balance the relative hardships borne by the movant and nonmovant and base its decision whether to modify the automatic stay on the result of that analysis and the goals of the Bankruptcy Code.⁸ The concept of “cause” is intentionally broad and flexible to allow the courts to respond in equity to inherently fact intensive inquiries.⁹

With respect to the burden of proof, section 362(g) states:

In any hearing under [section 362(d)] concerning relief from the [automatic stay] –

- (1) the party requesting such relief has the burden of proof on the issue of the debtor’s equity in property; and
- (2) the party opposing such relief has the burden of proof on all other issues.

The majority of cases arising under section 362(d)(1) involve creditors holding secured claims who allege that there is insufficient equity in the collateral to protect their interests,¹⁰ to which situations the foregoing burden allocation neatly applies. The Bankruptcy Code and the legislative history do not, however, speak directly to the question of the burden of proof where relief from the stay is sought for “cause” other than a lack of adequate protection (where the

⁷ See HR. Rep. No. 95-595, 95th Cong., 1st Sess., 343-44 (1977) See also *Mooney v. Gill*, 2002 U.S. Dist. LEXIS 4945, *8 (N.D. Tex. 2002), *In re RCM Long Term Capital Appreciation Fund, Ltd.*, 200 B.R. 514, 525-26 (Bankr. S.D. N.Y. 1996). See also generally 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (15th ed. rev. 2002).

⁸ See *Mooney*, 2002 U.S. Dist. LEXIS 4945, at *8; *In re Cardinal Indus., Inc.*, 116 B.R. 964, 983 (Bankr. S.D. Ohio 1990).

⁹ See *Mooney*, 2002 U.S. Dist. LEXIS 4945, at *8; *In re Sentry Park, Ltd.*, 87 B.R. 427, 430 (Bankr. W.D. Tex. 1988).

¹⁰ See *Mooney*, 2002 U.S. Dist. LEXIS 4945, at *9.

inquiry into equity in property is relevant)¹¹ In such cases, courts have held that the party seeking relief from the stay must initially establish a legally sufficient basis (i.e. cause) for granting the relief.¹² The party opposing relief (in most instances, the debtor) then has the burden of demonstrating that the stay should not be lifted.¹³ Ultimately, the decision of whether to lift the stay is left to the discretion of the bankruptcy court to be determined on a case-by-case basis.

Factors to be considered include whether relief would result in a partial or complete resolution of the issues,¹⁴ lack of any connection with or interference with the bankruptcy case,¹⁵ whether litigation in another forum would prejudice the interests of other creditors,¹⁶ the interests of judicial economy and the expeditious and economical resolution of the litigation,¹⁷ whether the parties are ready for trial in the other proceeding¹⁸ and the impact of the continuation of the stay and the balance of harms.¹⁹

A. The Wright Suit

With respect to the Wright Motion, allowing the Wright Suit to proceed in the United States District Court will not necessarily result in a final resolution of the issues. If Debtor prevails, absent an appeal by Wright, the issue will be resolved. If, in the alternative, Wright prevails, the issue of whether the resulting judgment is nondischargeable must be brought back

¹¹ *Cf id; In re Curtis*, 40 B.R. 795, 802 (Bankr. D. Utah 1984).

¹² *See Mooney*, 2002 U.S. Dist. LEXIS 4945, at *10.

¹³ *See Id*

¹⁴ *In re Curtis*, 40 B.R. 795, 802 (Bankr. D. Utah 1984)

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

before this court.

It is not clear that allowing the Wright Suit to proceed will interfere with Debtor's chapter 7 case. It is the court's understanding that Debtor has separate trial counsel to defend him in the Wright Suit, and, absent evidence to the contrary, the court assumes allowing the action to proceed will have minimal effect on the administration of Debtor's chapter 7 case.

To the extent Wright is successful in the Wright Suit, Debtor's other unsecured creditors will necessarily be "prejudiced" by the liquidation of the claim of another unsecured creditor to share in the recovery (unless the liquidation of Debtor's estate will result in a 0% recovery before liquidation of Wright's claim or a 100% recovery after liquidation). The court concludes, however, that this type of prejudice is not an appropriate consideration in these circumstances. If the allegations in the Wright Suit are true, Wright is properly a claimant of Debtor's estate (and, if the debt is determined to be dischargeable, of Debtor himself). The liquidation of any one particular creditor's claim is no more prejudicial to other, similarly situated creditors than would be the liquidation of any claim in the class. Where the claim is liquidated is not significant to the creditor. Further, the liquidation of Wright's claim would have no effect on other classes of creditors.

Allowing the Wright Suit to proceed will not serve the interests of judicial economy or result in the expeditious and economical resolution of the litigation. As stated above, if Wright prevails, the parties must still come back to this court for a determination of the dischargeability of the debt (as is no doubt contemplated by Wright in light of the currently pending adversary proceeding commenced for just that purpose).

As represented in the Wright Motion, the parties have already performed substantial discovery, and are ready to proceed to trial. This certainly weighs in favor of modifying the stay

¹⁹ *In re Abrantes*, 132 B.R. 234, 237 (N.D.N.Y. 1991)

and allowing the Wright Suit to proceed.

Finally, and perhaps most importantly, the court must consider the impact of leaving the stay unmodified and the balance of harms resulting therefrom. The court is certainly sensitive to the grave allegations set forth in the Wright Suit. The alleged conduct is reprehensible, and Wright deserves her day in court to test the merits of her case. On the other hand, Debtor has sought protection under the Bankruptcy Code, and one of the purposes of the automatic stay is to shield debtors from having to defend themselves in multiple courts. The court notes that Wright could request that the Wright Suit be transferred to this court to be heard in connection with Debtor's case. As Wright has requested a jury, this court is not empowered to hear the case absent consent of the parties. The parties may, however, move for a withdrawal of the reference of Debtor's case (with respect to this litigation) and have the Wright Suit heard in the United States District Court from which this court's jurisdiction is derived. Accordingly, denial of the Wright Motion would not foreclose Wright's ability to redress Debtor's alleged wrongdoings. A further benefit from such a course of action would be that the same court could reach both the merits of the Wright Suit and the issue of whether any resulting judgment should be made nondischargeable.

B. The Fitts Suit

Except as set forth below, the foregoing factors apply to the Fitts Suit exactly as they do to the Wright Suit.

Fitts represents that the parties have conducted substantial discovery and are prepared to go to trial. The court notes, however, that Fitts also has a potential Title VII action that has not yet been incorporated into the Fitts Suit. Accordingly, the Fitts Suit does not appear ready to proceed to trial.

Finally, and (as in the case of the Wright Suit) perhaps most importantly, the court must

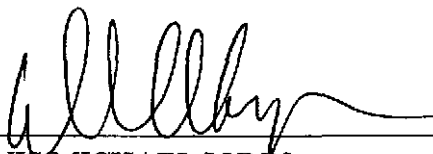
consider the impact of leaving the stay unmodified and the balance of harms resulting therefrom. The court notes the same tension between allowing Fitts her day in court and staying true to the automatic stay's purpose of providing a debtor with a respite from its creditors. The court notes that Fitts also could remove the Fitts Suit to the United States District Court in Dallas and seek a transfer to this court to be heard in connection with Debtor's case. As Fitts has requested a jury, this court is not empowered to hear the case absent consent of the parties. The parties may, however, move for a withdrawal of the reference of Debtor's case (with respect to this litigation) and have the Fitts Suit heard in the United States District Court from which this court's jurisdiction is derived. As such, denial of the Fitts Motion might result in a denial of Fitts' day in a particular court, but will not absolutely preclude a judicial determination of whether Debtor is liable for any misconduct. As with the Wright Suit, this consolidation of proceedings would result in the same court determining both the merits of the Fitts Suit and the issue of whether any judgment resulting therefrom should be nondischargeable.

III. Conclusion

Although sympathetic to the plight of Wright and Fitts, the court must not allow such sympathies to interfere with its obligation to give effect to the words and spirit of the Bankruptcy Code. The language and legislative history of section 362(d)(1) have been interpreted to mean the automatic stay will remain in place until such time as a party opposing it comes forward with a showing of "cause" for the stay to be modified. Here, while the court abhors the conduct complained of in the Suits, neither Wright nor Fitts has come forward with a compelling enough showing of cause for this court to modify the automatic stay to allow either of the Suits to proceed in their respective forums. Accordingly, the Wright Motion is DENIED and the Fitts Motion is DENIED, provided however that, the automatic stay is hereby modified to allow Plaintiffs to continue conducting discovery in the Suits and to take steps necessary to bring the Suits before

the United States District Court for the Northern District of Texas - Fort Worth Division (if they so choose), either in connection with Debtor's chapter 7 case or by other means. Should the Plaintiffs prefer to allow the Suits to continue in their respective present venues, the Court hereby ORDERS that the clerk of this court designate the earliest possible settings before this court for the Adversary Proceedings so that a dischargeability determination may be made and the Suits be allowed to proceed.

SIGNED this 18th day of December 2002.



DENNIS MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE